From: LERS, EOIR (EOIR)
To: LERS, EOIR (EOIR); All of Judges (EOIR); BIA BOARD MEMBERS (EOIR); BIA ATTORNEYS (EOIR); All of CLAD (EOIR); All of OCIJ JLC (EOIR); BIA TEAM JLC; BIA TEAM P (EOIR); Alder Reid, Lauren (EOIR); Allen, Patricia M. (EOIR); Baptista, Christina (EOIR); Bauder, Melissa (EOIR); Berkeley, Nathan (EOIR); Brazill, Caitlin (EOIR); Burgie, Brea (EOIR); Burgus, Elizabeth (EOIR); Cicchini, Daniel (EOIR); Cowles, Jon (EOIR); Curry, Michelle (EOIR); Evans, Brianna (EOIR); Grodin, Edward (EOIR); Hartman, Alexander (EOIR); Kaplan, Matthew (EOIR); King, Jean (EOIR); Korniluk, Artur (EOIR); Lang, Steven (EOIR); Lovejoy, Erin (EOIR); Martinez, Casey L. (EOIR); Noferi, Mark (EOIR); O"Hara, Shelley M. (EOIR); Park, Jeannie (EOIR); Powell, Karen B. (EOIR); Ramirez, Sergio (EOIR); Rimmer, Phillip (EOIR); Robbins, Laura (EOIR); Rodrigues, Paul A. (EOIR); Rodriguez, Bernardo (EOIR); Rothwarf, Marta (EOIR); Sanders, John W. (EOIR); Schaaf, Joseph R. (EOIR); Smith, Terry (EOIR); Stutman, Robin M. (EOIR); Swanwick, Daniel (EOIR); Taufa, Elizabeth (EOIR); Vayo, Elizabeth (EOIR)
Cc: McHenry, James (EOIR); Reilly, Katherine (EOIR); Santoro, Christopher A (EOIR); Sheehey, Kate (EOIR); Moutinho, Deborah (EOIR); Adams, Amanda (EOIR); Pease, Jeffrey (EOIR); Morgan, Kenosha (EOIR); Macri, Andrea (EOIR); EOIR Library (EOIR)
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EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
Office of Policy | Legal Education and Research Services Division

Policy & Case Law Bulletin
July 6, 2018

Federal Agencies

DOJ

- Attorney General Rescinds 24 Guidance Documents

  On July 3, 2018, the Attorney General "announced that, consistent with his November 2017 memorandum prohibiting the Department from making rules without following the procedures required by Congress, he is rescinding 24 guidance documents that were unnecessary, outdated, inconsistent with existing law, or otherwise improper." Among these documents are: "8. BJA State Criminal Alien Assistance Program Guidelines, 2016" and "14. Refugees and Asylees Have the Right to Work, May 2011."

- Virtual Law Library Weekly Update — EOIR

  This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

Supreme Court

CERT. GRANTED

- Saldana Castillo v. Sessions

  No. 17-1050, 2018 U.S. LEXIS 4077 (June 28, 2018)

  The Supreme Court vacated the judgment and remanded the case to the United States Court of Appeals for the Ninth Circuit for further consideration in light of Pereira v. Sessions, No. 17-459, 2018 U.S. LEXIS 3838 (June 21, 2018).

D.C. Circuit

- Damus v. Nielsen

  No. CV 18-578 (JEB), 2018 WL 3232515 (D.D.C. July 2, 2018) (Asylum-Detention)

  The D.C. District Court granted the plaintiffs' motions for a preliminary injunction and provisional class certification. The plaintiffs (and other members of the provisional class) are noncitizens being held at five ICE Field Offices who have received a credible-fear determination but have been denied parole. In finding that injunctive relief was warranted, the court ordered the defendants to follow a 2009 ICE Directive entitled "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture"—which provides a framework of minimum protections for those claiming refugee status—when assessing asylum-seekers' eligibility for release from detention.

Third Circuit

- S.E.R.L. v. Attorney Gen. of the United States

  No. 17-2031, 2018 WL 3233796 (3d Cir. July 3, 2018) (Asylum/WH-PSG)

  The Third Circuit denied the PFR, holding that the statutory interpretation articulated in Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014), and Matter of W-G-R-, 26 I&N Dec. 208 (BIA 2014), is entitled to Chevron deference and, applying the test as set forth in Matter of M-E-V-G-, that substantial evidence supported the Board's determination that S.E.R.L. had not satisfied the requirements. Specifically, the court determined that S.E.R.L.'s proposed particular social group consisting of "immediate family members of Honduran women unable to leave a domestic relationship" is not viewed as socially distinct in Honduras.

Fourth Circuit

- Guzman Gonzalez v. Sessions

  No. 17-1519, 2018 WL 3130544 (4th Cir. June 27, 2018) (Conviction)

  The Fourth Circuit granted the PFR, holding that $100 in court costs assessed attendant to a prayer for judgment continued under North Carolina law did not did not satisfy the Act's definition of penalty or punishment within section 101(a)(48)(A)'s definition of "conviction" such that he would be barred from cancellation of removal. The court determined that section 101(a)(48)(A) of the Act employs the terms "punishment" and "penalty" in their plain and ordinary sense and requires a judge to order a punitive sanction—i.e., one that is intended to discipline or deter and is proportionate to the underlying offense. In reversing the Board, the Court distinguished this case from Matter of Cabrera, 24 I&N Dec. 459 (BIA 2008), concluding that the Florida costs at issue in Cabrera were punitive in nature and therefore substantively different from the North Carolina costs at issue in this case.

Eighth Circuit

- Garcia-Mata v. Sessions

  No. 17-1682, 2018 WL 3188310 (8th Cir. June 29, 2018) (Standard of Review)

  The Eighth Circuit granted the PFR, holding that that it could not resolve whether the Board followed governing regulations on standards of review or conducted impermissible factfinding of its own when it vacated the IJ's decision granting withholding of removal. The case was remanded to the Board for further proceedings in which it could clarify its decision, or apply the correct standard of review, as appropriate.

- Martinez v. Sessions

No. 16-4242, 2018 WL 3134549 (8th Cir. June 27, 2018) (Controlled Substances; Aggravated Felony; Divisibility)

The Eighth Circuit denied the PFR, upholding the Board's determination that Martinez was removable for possession of methamphetamine with intent to deliver in violation of Mo. Rev. Stat. § 195.211. After considering the statutory text, the approved jury instructions, and state court decisions, the court held that the identity of the controlled substance is an element of the offense and therefore the statute is divisible based on the drug involved. As such, the Board properly applied the modified categorical approach to determine that Martinez was convicted of violating a state law relating to a controlled substance, and an illicit trafficking aggravated felony.

- Bueno-Muela v. Sessions

No. 17-1267, 2018 WL 3134550 (8th Cir. June 27, 2018) (Controlled Substances; Divisibility)

The Eighth Circuit denied the PFR, upholding the Board's determination that Bueno-Muela was removable for possession of methamphetamine in violation of Mo. Rev. Stat. § 195.202. Relying on its holding in Martinez v. Sessions, filed on the same day, the court concluded that the specific controlled substance is an element of simple possession under Mo. Rev. Stat. § 195.202. The court further determined that because the identity of the controlled substance is an element of the offense, the statute is divisible and the Board could consult the record of conviction to determine that Bueno-Muela was convicted of violating a state law relating to a controlled substance listed in the federal drug schedules, in this case methamphetamine.

Ninth Circuit

- Qamar v. Sessions

No. 14-73865, 2018 WL 3214430 (9th Cir. July 2, 2018) (unpublished) (Motion to Reopen)

The Ninth Circuit granted the PFR and remanded for the Board to reconsider Qamar's motion to reopen in light of the court's decision to take judicial notice of evidence demonstrating changed political circumstances in Pakistan that were not available when the Board rendered its decision. Generally, the court reviews out-of-record evidence only where the Board considers the evidence, or the Board abuses its discretion by failing to consider such evidence upon a motion. However, the court determined that the changes presented in this case were "significant enough that we cannot 'close our eyes' to them."

- Healey v. Nielsen

No. CV 14-00373 SOM/KSC, 2018 WL 3213611 (D. Haw. June 29, 2018) (unpublished) (Visa Petitions; Jurisdiction)

The Hawaii District Court granted the Government's motion for summary judgment, ruling that in light of the Ninth Circuit's decision in Burbank v. Nielsen, 708 F. App'x 465 (9th Cir. 2018), it lacked jurisdiction over the petitioner's claims. The claims raised in this case and Burbank are identical—both petitioners committed a "specified offense against a minor" as defined under the Adam Walsh Child Protection and Safety Act of 2006, and were denied family-based petitions on the basis that USCIS could not determine whether they posed "no risk" to their beneficiary spouses. The Ninth Circuit held in Burbank that section 204(a)(1)(A)(viii) of the Act precludes judicial review of the Secretary's "no risk" determinations because those determinations fall within the Secretary's "sole and unreviewable discretion."

Eleventh Circuit

- Teye v. Sessions

No. 17-11551, 2018 WL 3199151 (11th Cir. June 28, 2018) (unpublished) (False Claim of U.S. Citizenship)

The Eleventh Circuit denied the PFR, concluding that U.S. citizenship was a prerequisite to acquiring Georgia's five-year driver's license, therefore Teye's false claim of citizenship on her driver's license application necessarily affected her eligibility for a benefit under Georgia law, rendering her inadmissible under section 212(a)(6)(C)(ii)(I) of the Act.